

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CARLO MOYA, INDIVIDUALLY
AND AS A LEGAL GUARDIAN AND
NEXT FRIEND OF X.X., A MINOR,**

V.

**BELGER CARTAGE SERVICE, INC.
AND DAVID EUGENE ROGERS**

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**CIVIL ACTION NO.
JURY DEMAND**

DEFENDANT, DAVID EUGENE ROGERS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant **DAVID EUGENE ROGERS** in the above entitled and numbered cause, and files this Notice of Removal of the above-captioned case. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 and 1446.

I. BACKGROUND

1. On February 3, 2022, Plaintiff Carlo Moya, Individually and as Legal Guardian and next friend of x.x., a minor sued Belger Cartage Service, Inc. (hereinafter referred to as “Belger”) and David Eugene Rogers, in the County Court at Law No. 5, Dallas County, Texas, Cause No. CC-22-00604-E, alleging negligence against both parties.
2. Plaintiff Carlo Moya is a citizen of the State of Texas.
3. Defendant Belger is organized in the State of Missouri, with its corporate office and principal place of business in the Kansas City, Missouri.
4. Defendant David Eugene Rogers is a citizen of Climax, Greenwood County, Kansas.
5. Plaintiff’s Original Petition, filed contemporaneously herewith, states that the amount of damages sought is more than \$1,000,000.

II. BASIS FOR REMOVAL

6. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because Plaintiff is a citizen of the State of Texas, Defendant Belger is a Missouri corporation, with its principal place of business in the State of Missouri, and David Eugene Rogers is a citizen of the State of Kansas. Additionally, the amount in controversy exceeds \$75,000.

A. Complete Diversity Exists.

7. As this Court is aware, for diversity purposes, a person is considered a citizen of the state where that person is domiciled. Plaintiff is a person and domiciled in the State of Texas. Defendant Belger is not domiciled in the State of Texas, but rather was formed in Missouri, with its principle place of business in Kansas City. Defendant David Eugene Rogers is a citizen of the State of Kansas.
8. The only managers listed for Defendant Belger are located in the State of Missouri.
9. Because the Plaintiff, Defendant Belger, and Defendant David Eugene Rogers, do not share in citizenship in any state, removal is proper on diversity grounds.
10. All Defendants are now, and were at the time of the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332.

B. The Amount in Controversy Exceeds \$75,000.

11. As previously stated, Plaintiff filed his Original Petition on February 3, 2022. Plaintiff identified the amount in controversy to be over \$250,000.
12. Accordingly, Plaintiff seeks damages beyond the threshold amount of \$1,000,000, establishing an amount in controversy over \$250,000.

13. Accordingly, because this notice of removal has been filed within the time available after Plaintiff provided her Original Petition, providing her claim for relief, this removal is proper and timely under 28 U.S.C. § 1446(b)(3).
14. The United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas, the place where the state court action was filed and is pending.
15. The live pleadings before the state court are Plaintiff's Original Petition. No other motions are pending before the state court.
16. All pleadings, process, orders served upon Defendants in the state court action are attached to this Notice as Exhibit "A," as required by 28 U.S.C. § 1446(a).
17. Defendant David Eugene Rogers hereby demand a trial by jury in accordance with the provisions of FED. R. CIV. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendant, David Eugene Rogers as parties diverse with the Plaintiff, respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas, Dallas Division, and for such other and further relief to which they may show themselves to be justly entitled in equity or law.

Respectfully submitted,

/s/ Michael P. Sharp

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ATTORNEYS FOR DEFENDANT

DAVID EUGENE ROGERS

CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that on this the 16th day of March, 2022, a true and correct copy the foregoing instrument was served on the following counsel of record authorized by Federal Rule of Civil Procedure 5(b)(2):

Via Certified Mail/RRR:

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/s/ Michael P. Sharp

MICHAEL P. SHARP